

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Rev. & Tax. Committee Analyst: Jeff Garnier Bill Number: AB 2892  
Related Bills: See Legislative History Telephone: 845-5322 Introduced Date: 03/09/2000  
Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

**SUBJECT:** Information Returns>Returns of Individuals and Fiduciaries/Interest on Unpaid Tax and Deficiencies

### SUMMARY

This Franchise Tax Board (FTB) sponsored bill would add, amend, renumber and repeal various sections of the Revenue and Taxation Code (R&TC) to conform more closely to the language and structure of the Internal Revenue Code (IRC). These changes would consolidate provisions, delete obsolete provisions and change language for clarification pertaining to filing requirement thresholds, filing status and assessment of interest.

### EFFECTIVE DATE

This bill would be effective January 1, 2001. Provisions affecting the imposition or computation of tax, additions to tax, penalties, or the allowance of credits would be operative for taxable and income years beginning on or after that date. Other provisions would be operative on and after that date.

### LEGISLATIVE HISTORY

SB 2176 (2000) contains provisions identical to this bill.

### SPECIFIC FINDINGS

#### 1. General Conformity

While the **Personal Income Tax Law** (PITL) and much of **Bank and Corporation Tax Law** (B&CTL) are conformed to the IRC by direct reference, the **Administration of Franchise and Income Tax Law** (AFITL) contains primarily stand-alone state language. However, in most cases, the stand-alone language is the same as federal law.

Although the legal effects of federal and state laws regarding some provisions are the same, the language contained in the R&TC differs from the language contained in the IRC. This difference can cause confusion in certain circumstances, especially with tax practitioners familiar with federal law.

Over time, California law has a tendency to drift away from federal law. This often creates unintended differences and, in general, makes it more difficult for the FTB to rely on federal law, regulations, and court decisions in carrying out its administrative duties under the R&TC. Also, without constant examination of the state law, obsolete and unnecessary provisions may begin to clutter the R&TC, making the law more difficult to understand for taxpayers and the department.

#### Board Position:

<u>  X  </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> PENDING

#### Department Director

#### Date

Alan Hunter for GHG

4/6/00

**This bill** would amend several sections of state law to conform more closely to the language and structure of the IRC. Some separately stated provisions in the AFITL would be replaced with a direct reference to the federal statute.

**This bill** also would eliminate obsolete provisions and make necessary technical changes.

## 2. Tax and Information Returns

**Current federal law** provides that an individual taxpayer must file an income tax return if his gross income equals or exceeds a specified amount. Married taxpayers may file a joint return. Corporations, trusts and estates also must file income tax returns. A partnership files an information return of income. Payers and others must file information returns to report specified payments, sales, etc. Times, places and methods of paying tax are specified.

**Current state law** provides, in general, that every individual (or fiduciary) shall file an income tax return with FTB for each taxable year, and the R&TC contains specific rules relating to threshold requirements, due dates, extensions, filing status, and changes in filing status.

**California law** generally follows federal law by requiring businesses to file information returns reporting payments made by or to other persons. This information is matched against income tax returns and generally used for purposes of identifying taxpayers who have under-reported or failed to report amounts received as income and to verify certain deductions claimed on their return.

Article 4 of Chapter 2 of Part 10.2 (commencing with Section 18631) of the AFITL contains provisions similar to the provisions of Part III of Chapter 61 of Subtitle F of the IRC relating to information returns. Although the organization of the state provisions generally follows the organizational sequence of the IRC, the differences in organization and separately stated provisions make state law difficult to understand in relation to federal law, even in areas in which the two are substantially the same.

**This bill** would consolidate many filing requirements for individuals and fiduciaries into the same section and repeal numerous sections of law that currently set forth a separate filing requirement. **This bill** would clarify that in most cases a copy of the federal information return satisfies the state-reporting requirement.

**This bill** would increase the filing requirement threshold amounts for fiduciaries to match the threshold amounts for individuals.

## 3. Assessment of Interest

**Current federal law**, IRC Section 6601, requires that interest be assessed at a specified rate on all underpayments or deficiencies from the last date prescribed for payment, until paid.

**California law** is generally in conformity with federal law as it relates to the assessment of interest on underpayments and deficiencies. However, California law conforms to federal law by stand-alone language and uses six code sections to do so.

**This bill** would consolidate R&TC sections relating to interest on unpaid tax and deficiencies similar to the structure in the IRC.

#### Policy Considerations

This bill would increase the filing requirement threshold amounts for fiduciaries to match the threshold amounts for individuals. The current amounts require fiduciaries who do not have a tax liability to file a return. Increasing the threshold amounts would eliminate the need for those taxpayers to file a return and decrease the number of returns processed by the department.

Conforming to federal tax law is generally desirable because it is less confusing for the taxpayer. With conformity, the taxpayer is required to know only one set of rules. Conformity also eases FTB's administration of the law by utilizing many federal forms and instructions. It allows the department to more fully use federal regulations, rulings, and court decisions when administering provisions of the R&TC. Reliance upon federal regulations, rulings, and court decisions helps to reduce the number of protests and appeals and enables the department and taxpayers to resolve protests and appeals more quickly at less cost. Also, elimination of obsolete and unnecessary provisions makes the law easier to read for the taxpayers and the department.

#### Implementation Considerations

This bill would assist the department's programs and operations by easing administration of the tax law. Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the department's normal annual update.

#### Technical Considerations

Amendments are provided to resolve the following technical considerations.

- ⌚ Amendment 1 would correct a typographical error.
- ⌚ Amendment 2 would delete a repeated word.
- ⌚ Amendment 3 would capitalize "internal."
- ⌚ Amendment 4 would correct a reference.
- ⌚ Amendments 5 and 7 would prevent the inadvertent moving of an interest section (in article 1) to the refund article (Article 2).
- ⌚ Amendment 6 would make a change to reflect a departmental proposal contained in AB 2897 and SB 1791 that changes Section 19411 of the R&TC. Without this amendment two of the department's proposals conflict.

#### FISCAL IMPACT

##### Departmental Costs

No departmental costs are associated with this bill.

Tax Revenue Estimate

This bill would not impact state tax revenue.

BOARD POSITION

Support.

The Franchise Tax Board voted at its December 16, 1999, meeting to sponsor the language contained in this legislation.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 2892  
As Introduced March 9, 2000

AMENDMENT 1

On page 5, line 36, strikeout "make" and insert:

made

AMENDMENT 2

On page 6, line 36, strikeout "of" the second time it appears.

AMENDMENT 3

On page 10, line 30, strikeout "internal" and insert:

Internal

AMENDMENT 4

On page 16, line 20, strikeout "69" and insert:

68

AMENDMENT 5

Strikeout page 27, line 7 through page 29, line 12, inclusive,  
and insert:

SEC. 27. Section 19104 of the Revenue and Taxation Code is amended to read:  
19104. (a) ~~Interest upon the amount assessed as a deficiency shall be assessed, collected, and paid in the same manner as the tax at the adjusted annual rate established pursuant to Section 19521 from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for payment of the first installment, until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on that portion only to the date paid.~~

~~(b) If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the~~

~~refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this subdivision.~~

~~(e)(1)~~ In the case of any assessment of interest, the Franchise Tax Board may abate the assessment of all or any part of that interest for any period in any of the following circumstances:

(A1) Any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(B2) Any payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to that officer or employee being dilatory in performing a ministerial or managerial act.

(E3) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable or income year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(D4) For purposes of this paragraph:

(iA) Except as provided in subparagraph (C), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(iiB) Within 180 days after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization. The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.

(iiiC) Except for the amendment adding clause (ii), the amendments made by the act adding this clause are operative with respect to taxable or income years beginning on or after January 1, 1998. The amendment adding clause (ii) is operative for requests for abatement made on or after January 1, 1998.

(2b) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(A1) The taxpayer (or a related party) has in any way caused that erroneous refund.

(B2) That erroneous refund exceeds fifty thousand dollars (\$50,000).

#### AMENDMENT 6

On page 30, strikeout lines 38 through 40, inclusive, and insert:

19521 from the date that is 30 days after the Franchise Tax Board mails a notice and demand for repayment.

AMENDMENT 7

On page 33, between lines 9 and 10, insert the following:

SEC. 33.5. Section 19368 is added to the Revenue and Taxation Code to read:

19368. If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this subdivision.